(1) Supreme Court, U.S.
FILED

951963 JUN 4 1996

No. A-692 OFFICE OF THE CLERK

In The

Supreme court of the United States
October Term, 1995

◆

FRED RUCKER,

Petitioner

v

CITICORP SAVINGS OF ILLINOIS,

Respondent.

◆

On Petition for a Writ of Certiorari
To The Illinois Court of Appeal for the First District

◆

PETITION FOR A WRIT OF CERTIORARI

◆

Fred Rucker
P.O. Box 806024
Chicago, IL 60680
(312) 793-7959
Pro Se

32 pp

QUESTIONS PRESENTED

Whether the State court committed procedural errors serious enough to prevent a fair hearing and in so doing, deny petitioner his due process rights, under the Fourteenth Amendment.

Whether Article III courts may decide questions of "mootness" when live controversy continues to exist. Powell v. McCormack, 395 U.S. 486 (1969). Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911). Super Tire Engineering Co. v. McCorkle, 416 U.S. 115 94 S. CT 1694. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 459 (1957)

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ABLE COPY

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IN THE

Supreme court of the United States
October Term, 1995

FRED RUCKER,

Petitioner

v

CITICORP SAVINGS OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari
To The Illinois Court of Appeal for the First District

Fred Rucker respectfully petitions for a writ of certiorari to review the judgement of the State Court of Appeals in this case.

DECISION BELOW

The decision of the state appeals court may be found in Appendix A.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. §1257 as revised in The Act of June 27, 1988, 102 Stat. 662

STATUTORY PROVISIONS INVOLVED

705 ILCS 25/8.2

Appeals from Appellate Court shall lie to the Supreme Court as a matter of right only (a) in cases in which . questions under the Constitution of the United States or of this state arises for the first time

in and as a result of the action of the appellate court and (b) upon the certification by a division of the appellate court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. The Supreme Court may provide by rule for appeals from the appellate court in other cases.

STATEMENT

This case involves violations of Petitioner's Fourteenth Amendment rights in its purest interpretation.

The errors committed at the trial and Appellate court level were so critical as to deprive this petitioner of his home and several hundred thousand dollars in income property.

The issues brought before the state court were clear and unambiguous. So clear were the issues that the presiding Justice ordered the case be considered [without] oral argument. (See Appendix 'A' for Judges notice)

An error took place (in Appellate process) when the Clerk inadvertently sent notice that oral argument had been scheduled, despite the Judges written decision that oral argument was [not necessary]. The Clerk's notice, coming after the Judge's decisions, had the effect of usurping the Judges authority. (Woodward and Armstrong, The Brethrens).

In any appeal, civil or criminal, the Appellant should be entitled to as a matter of right to present oral argument unless;

a) The appeal is frivolous

b) The facts are simple and no useful purpose could be served by oral argument.[1]

These standards are now embodied in Rule 34(2) of the Federal Rule of Appellate Procedure and are followed by the courts of appeal.

When the appeals Judge decided to consider the case, it was quite clear (in his statement) that his intentions were not to dismiss the case. Nevertheless, after months of delay and without the benefit of oral argument, the court dismisses the case for "mootness".

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[1] Commission on Revision of Federal Court Appellate System. Structure and Internal Procedures: Recommendations for Change 48 (Washington, DC June 1976)

REASONS FOR GRANTING CERTIORARI

The due process clauses have a procedural aspect in that they guarantee that each person shall be accorded a certain "process" if they are deprived of life, liberty, or property. If life, liberty, or property is at stake, the individual has a right to a fair hearing. In all instances, the state must adhere to previously declared rules for adjudicating the claim or at least not deviate from them in a manner which is unfair to the individual against whom the action is taken.

During the Appellate process, it is important that the decision conference be held as soon as possible after review of the case. The reason is evident; judicial reactions are more complete and facts and argument are clearer in the minds of all the members of the panel. As time passes, cases and analyses become blurred and confused: They must be re-reviewed before intelligent decisions can be made.

During the six month delay in this case, the courts attention was diverted from the issues and centered on an event (Transfer of Title) subsequent to the acceptance of the final brief. This event prompted an adverse decision. Palko v. Connecticut, 320 US. 319 (1937)

Transferring Title to property while the ownership of the property is under review by the court is a contemptuous act and should have been recognized as a violation of state law 735 ILCS 5/15 - 1509. Sometimes the controlling precedent is so clearly relevant (even if not dispositive) that it is difficult to understand how the lower court could have failed to acknowledge its significance. Arthur v. People 380 U.S. 250 (1964) United States v. Haley 358 U.S. 644 (1958)

A ruling by the state court based on such a manipulative act is abusive and in error; it allows the serious issues of consumer fraud and misrepresentation to escape review.

The decision made by the state court of appeals, and sanctioned by the state court of last resort, has so far departed from the accepted and usual course of judicial proceedings, the exercise of this Courts power and supervision must be invoked.

A. Dismissal for Mootness is Erroneous

The Appellate court errored in dismissing the case based on "mootness" because (1) during the pendency of an appeal, property may not be properly conveyed to a third party unless the appeal is either denied or withdrawn. ILCS 735 5/15-1509 (2) the courts decision to dismiss was defective because it relied on information that should not have been considered. The affidavit submitted by Respondents asserting that the Title to the property in question had been conveyed to a third party was completely lacking in substance to support that claim. See Staren & Co. v. Shapiro 32 Ill. App. 3d 396,400.

The appeals court should have used caution in accepting as fact an action bearing so significantly on the case. In Subron v. New York, 392 U.S. 40,57 (1968) it was held, "reasonable caution include we think, not accepting as conclusive the exparte affidavit of the party seeking fees without providing the other party the opportunity to adduce controverting facts that show the alleged dispute to be abstract, feigned, or hypothetical."

A case can not be "mooted" when the act allegedly causing the "mootness" is illegal. Consider Church of Scientology v. United States. U.S. 113 S. CT 447,121 l. Ed. 2d 313 (1992)

In the past, the Court has held that Article III courts may not decide questions of mootness. In Love v. Griffith, 266 U.S. 32, Justice Brennan stated: "We think, however, that in this case the question of "mootness" is itself a question of Federal law upon which we must pronounce final judgement."

B. Misjoinder of Causes Renders Decision Defective

In a civil case initiated several years ago against Respondent for the federal offense of "Redlining", excessive insurance premiums were sought as damages in a counterclaim. In this case, which addresses a different issue, the appeal was based on Respondents actions in establishing the "sale price" of a property by adding several thousand dollars in insurance premiums. When the decision in this case was written, the basis for the dismissal relied on the earlier [unrelated] case with separate issues. (Evidence of the separate cases may be found in Appendix "B")

The assumption that an appeal to a mulijudge court is a protection against error, prejudice, and human failings is not evident in this courts decision. Eliminating oral argument also eliminated proof that the full tribunal was aware of the Trial Court's error. The court had a duty to address the errors.

C. Oral Argument Waived, Granted, Denied

While the presiding Justice determined that oral argument was [not necessary] presumably because "the facts and issues were simple"[2], the state Clerk proceeded to schedule the case for argument. After granting several extensions (which amounted to several months and a delayed decision), Appellant was denied oral argument.

The U.S. Court of Appeals for the Third Circuit, which was studied the problem of eliminating oral argument and has listed in its published criteria, Internal Operating Procedures the following:

> Experience discloses that judges usually vote for oral argument: (1) Where the appeal presents a substantial and novel legal issue. (2) Where a decision, legislation, or event, subsequent to the filing of the last brief, may significantly bear on the case.

The criteria developed by experience in the U.S. Court of Appeals, Third Circuit, appear to be sound whether for federal or state appellate court.

In this case, the property in question was allegedly sold and Title conveyed to a third party [after] the last brief was accepted for review. The state court was clearly abusive when it deviated from established criteria and rendered its decision based on such an event.

Oral argument was requested in this case not only to emphasize the significant errors, but also because as Justice Brennan said, "Oral argument is the absolutely indispensable ingredient of appellate advocacy. I have had too many occasions when my judgement of a decision has turned on what happened in oral argument, not to be terribly concerned for myself were I to be denied oral argument." Similarly, Justice Powell has said, "the fact is, as every judge knows, that the

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[2] Internal Operating Procedures of Appellate Courts 33.

quality of advocacy - the research, briefing and oral argument of the close and difficult cases contribute significantly to the development of precedents." In the words of Chief Justice Rehnquist, "It does make a difference: I think that in a significant minority of cases in which I have heard oral argument, I have left the bench feeling different about the case then I did when I came on the bench." Supreme Court Practice, Seventh Edition.

The value of oral argument cannot be diminished. Without oral argument there is no evidence that the Tribunal was apprised of the case.

It should be noted that the brief was prepared and submitted pro se and counsel was retained specifically to present oral argument. Schlanger v. Seamans, 401 U.S. 487 (1971) The serious errors on this matter, committed by the appeals court, requires the supervision of this court to set aside such a decision because the "decisional process" was flawed.

IMPORTANCE OF THE QUESTIONS

The importance of the Question lies in how the decision was reached rather than why it was reached. The Appellate process should insure a measure of public confidence in the judicial system, and oral argument assures a measure of visibility in the appellate functioning.

Litigants who have been wronged must seek relief through the judicial system. However, if the [court system] is one that abuses its authority, ignores pertinent issues and generally allows the judicial process to be manipulated, the public's interest is not being served.

Too often, a "good lawyer", is considered to be one who can manipulate the judicial system, e.g. through motions, appeals, extensions, etc; to win an argument. The Character of a judicial system is determined by its ability to seek fairness and the truth.

A system that allows legal maneuvering without redress, leaves litigants vulnerable to "rights" violations. It is insulting to the judicial system and confusing to all who must conform their conduct to the dictates of national law.

A decision like this cannot be allowed to stand if justice and the appearance of justice are to be satisfied.

to correct, it is assumed they will not invariably stand by and do nothing simply because the case has no importance to anyone besides the parties involved.

CONCLUSION

In Rader v Bussey, the court held that the elements of fraud in the "sale price" would be cause to set aside that sheriff' sale. The abundance of evidence (in the record) showing fraud and misrepresentation directed the sale should have been set aside.

The State court, in dismissing this case as "moot" abused its authority, deviated exceedingly from established appellate policy and practice, relied on inadmissible evidence, misjoined cases, ignored negligent behavior in the market place and disregarded the "doctrine of clean hands" in equity court.

This ruling by the appeals court should not be allowed to stand if justice or the appearance of justice is to be upheld.

This decision by the lower court mocks the Constitution and if allowed to stand sets a precedent for countless individuals property rights to be trampled.

Certiorari should be granted or as an alternative the case should be sent back to the lower court for reconsideration.

Respectfully submitted,

Fred Rucker, pro se

Fred Rucker
P.O. Box 806024
Chicago, Illinois 60680
(312) 793-7959

APPENDIX A

Seal of the State of Illinois August 26th 1818

Appellate Court of Illinois
Chambers of Justice Anthony Scariano
160 North LaSalle Street
Chicago, Illinois 60601
(312) 798-5450

January 24, 1995

Fred Rucker
Pro se
P.O. Box 806024
Chicago, IL 60680

Holleb & Coff
55 E. Monroe Street
Suite 4100
Chicago, IL 60603

ATTN: David I. Herbst
Ronald A.

Damashek

Scott H. Kenig

Re: 94-0636

Citicorp Savings of Illinois v. Fred Rucker, et al.

Dear Counsel:

After an examination of the record and a review of the briefs herein, we are of the opinion that an oral argument is not necessary. We are, therefore, taking this case for consideration without oral argument, pursuant to Supreme Court Rule 352 (a) as amended.

Very truly yours,

"s/Anthony Scariano"
Presiding Justice
Second Division

03/22/95

APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re: CitiCorp, Inc. v. Rucker, Fred

Appellate No: 1-94-0636

The case in the above entitled cause is set for oral argument at 9:30 A.M. on 04/25/95 in the Appellate Courtroom, First District.

/s/ Gilbert S. Marchman,

Clerk

Fred Rucker
Pro se
P.O. Box 806024
Chicago, IL 60680

05/03/95

APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re: CitiCorp, Inc. v. Rucker, Fred

Appellate No: 1-94-0635

The case in the above entitled cause is set for oral argument at 9:30 A.M. on 06/20/95 in the Appellate Courtroom, First District.

/s/ Gilbert S. Marchman, Clerk

Fred Rucker
Pro se
P.O. Box 806024
Chicago, IL 60680

06/14/95

APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re: CitiCorp, Inc. v. Rucker, Fred

Appellate No: 1-94-0635

The case in the above entitled cause, set for oral argument at 9:30 A.M. on 06/20/95 in the Appellate Courtroom, First District, has been canceled until further notice.

/s/ Gilbert S. Marchman, Clerk

Fred Rucker
Pro se
P.O. Box 806024
Chicago, IL 60680

*** CANCELLATION NOTICE ***

APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITICORP SAVING OF ILLINOIS	)	
	)	
Plaintiff-Appellee,	)	
	)	No. 94-0636
v.	)	
	)	
FRED RUCKER, et al.,	)	
	)	
Defendant-Appellant.	)	

ORDER

This matter having come before the court on plaintiff's motion to dismiss this cause on grounds of mootness and on defendant's response thereto.

and it appearing to the court that the property forming the subject matter of this foreclosure suit has been conveyed to third parties who are not parties to the litigation or acting as nominees for parties to the litigation; further that no stay has been granted herein, and that consequently, it would be impossible for its court to grant effective relief to either party,

and it further appearing to the court that there is a counterclaim pending in the Circuit Court seeking monetary relief based on allegations of the defendant that he was overcharged for insurance on the foreclosed property,

and it further appearing that said counterclaim remains unresolved, the only effectual relief, if any, that can be granted in this cause would necessarily be that which might be able to be rendered by the Circuit Court,

IT IS HEREBY ORDERED that this cause be and the same is hereby dismissed for mootness.

ORDER ENTERED

s/"Anthony Scariano"
PRESIDING JUSTICE ANTHONY SCARIANO

JUN 15 1995

s/"Allen Hartman"
JUSTICE ALLEN HARTMAN

JUNE 15 1995

s/"Gino L. DiVito"
JUSTICE GINO L. DIVITO

Dated: JUN 15 1995

ILLINOIS SUPREME COURT
-- FACT SHEET --

79642 DOCKET: Closed
Citicorp Savings of Illinois, respondent, v. Fred Rucker et al., petitioners. Leave to appeal, Appellate Court, First District.
DISTRICT: 1 CIRCUIT: COUNTY: Cook
RULE: 315

REFERENCE INFORMATION:
TRIAL JUDGE: Ericsson, Robert D.
CASE NUMBERS: AC1-94-0636 TR88CH10806
M-061595

PETIT/APLT ATTORNEY: Mr. Clarke P. Devereux
Attorney at Law
847 Franklin
River Forest, IL 60305
FEE: $25.00
PARTY: Rucker, Fred
RESPN/APLE ATTORNEY: Holleb & Coff
Attorneys at Law
55 E. Monroe, S#4100
Chicago, IL 60603
ATTORNEY: Mr. Ronald A. Damashek
Holleb & Coff
55 E. Monroe, S#4100
Chicago, IL 60603
FEE: $15.00
PARTY: Citicorp Savings of Illinois

--- --Due-- -FILED--

INITIATION DATE: 08/24/95
PETITION FOR LEAVE TO APPEAL..... 08/24/95
ANSWER TO PLA..... 09/07/95
09/07/95

PLA due 082495.....

12/29/95 - MOVANT - PETIT/APLT

Motion for Stay of Mandate
pending the filing and dispo of pet for
writ of cert in the USSC. kf
OBJECTION DUE: 01/02/95
01/03/96 - MAM
Denied
mk

DISPOSITION: 12/06/95 - ORDER
PETITION FOR LEAVE TO APPEAL DENIED
MANDATE TO ISSUE: 01/08/96
MANDATE ISSUED: 01/08/96 TO: AC
VAULT NUMBER: 0

********** END OF FACT SHEET **********

APPENDIX B

Case I

CITIBANK

April 30, 1992

Mr. Fred Rucker
1458 East 71st Place
Chicago, Illinois 60619

Re: Your Account No. 06473059

Dear Mr. Rucker:

Confirming our telephone conversation, we have now completed our investigation of the allegations contained in your recent letter to John Reed and have reviewed the additional documentation you transmitted to me on April 28, 1992. our review has determined that you received inconsistent information from us and our affiliate servicer regarding the amount of forced placed insurance premiums that would be charged to your mortgage loan account and the coverage provided thereby.

As a result of this poor Customer Service on our behalf, we will agree to reduce the amount of our claim in your Chapter 13 Bankruptcy by $10,000. This amount represents the approximate difference between your $2,400 insurance premium prior to forced placement and the $422 disputed forced placed insurance premium, multiplied by the five years this matter has been pending.

I have instructed our outside counsel to immediately contact the Bankruptcy Trustee and take the appropriate steps to reduce our claim. Our attorney or the Bankruptcy Trustee will inform you of the results thereof and any effects on your payments. Any attorneys' fees or costs associated with the reduction of our claim will also be paid by us.

As a condition precedent to this reduction in our claim, you agree to keep this matter confidential and to refrain from any further communication with us concerning your allegations regarding insurance premiums, insurance coverage and attorneys' fees.

Please also be informed that our actions should not be construed in any way as an admission of liability by Citibank, F.S.B. or any employee or affiliate thereof.

Thank you for your patience while we completed our investigation of this matter. Pleas contact me at (312) 977-5518 with any further questions.

Very truly yours,

s/"Bruce S. Marshak
Associate General Counsel

cc:
William Atwell
Joseph Griese
Anthony Manisco
Steve Rappin, Esq.
Dennis Vena, Esq.

CERTIFICATE OF INSURANCE

MASTER POLICY NUMBER Am B1810350

12:01 A.M. STANDARD TIME

COVERAGE IS PROVIDED IN THE INSURANCE COMPANY OF ILLINOIS AGENCY - 8520

CERTIFICATE - RIM 50 POLICY EFFECTIVE 11-01-88 EXPIRATION 11-01-99

NAMED INSURED OR MORTGAGOR & ADDRESS

Fred RUCKER
American National Bank
1456-58 E. 71st Place, Chicago, IL 60619

AGENT

W.W. VINCENT & COMPANY
175 W. JACKSON BLVD., SUITE A-142
CHICAGO, IL 60605

INSURANCE IS PROVIDED AS PER FORMS ATTACHED TO MASTER POLICY NUMBER LISTED ABOVE.
DESCRIPTION AND LOCATION OF PROPERTY COVERED

SHOW ADDRESS (NO., STREET, CITY, COUNTY, STATE, ZIP CODE).
IDENTIFY WHETHER RESIDENTIAL OR COMMERCIAL; OCCUPIED OR UNOCCUPIED.

LOCATION ADDRESS SAME

OCCUPANCY

RESIDENTIAL	_____
COMMERCIAL	__x__
OCCUPIED	_____
UNOCCUPIED	_____

Contingent Mortgagor's Coverage _____ Yes _____ No (Residential Mortgagor Occupied Property only)

Coverage A. Mortgagor's Personal Property _____ (10% of Building Amount)
B. Additional Living Expense _____ (10% of Building Amount)
C. Mortgagor's Premises Liability _____ Limit $25,000 each occurrence

AMOUNT OF INSURANCE $338,000.00
ANNUAL PREMIUM $372.00

MORTGAGE CLAUSE: SUBJECT TO THE PROVISIONS OF THE MORTGAGE CLAUSE, LOSS, IF ANY ON BUILDING ITEMS, SHALL BE PAYABLE TO:

00-0108027 (Loan Number)

COUNTERSIGNATURE DATE

COUNTERSIGNED BY

S/ "Ronald Kalish"
W.W. VINCENT & COMPANY
AUTHORIZED REPRESENTATIVE

Case II

Law Offices
HAUSELMAN & RAPPIN, LTD.
30 South LaSalle Street
Chicago, Illinois 60603

(312) 372-2020
Fax No. (312) 372-0404

May 21, 1993

Ralph W. Miller, Jr.
2021 Midwest Road
Suite 300
Oakbrook, Illinois 60521-1359

Re: Citibank, F.S.B. v. Fred Rucker, et al.
1456-58 East 71st Place
Chicago, Illinois
Case No. 91 B 2046
Loan No. 6473059
Our File No. 88-2000-2008

Dear Mr. Miller:

In response to your letter directed to Rhoda Markovitz, the following contains an itemization of the escrow balance regarding the above-referenced loan:

02/07/88	Insurance ($352.00)	$294.70 (shortage)
02/09/88	Cook County Collector 1st Installment 1987	807.67
03/06/88	Insurance	352.00
04/05/88	Insurance	352.00
05/08/88	Insurance	352.00
05/17/88	Property Inspection	14.00
06/05/88	Insurance	352.00
06/23/88	Property Inspection	14.00

07/03/88	Insurance	352.00
08/07/88	Insurance	352.00
08/18/88	Cook County Collector 2nd Installment 1987	1,595.26
09/04/88	Insurance	352.00
10/02/88	Insurance	352.00
10/03/88	Property Inspection	15.00
11/06/88	Insurance	352.00
12/20/88	Attorney's fees and costs	416.34
01/23/89	Attorney's fees and costs	25.00
02/21/89	Attorney's fees and costs	135.00
02/23/89	Cook County Collector 1st Installment 1988	1,201.47
03/31/89	Insurance	20.00
03/31/89	Insurance	**1,156.00**
07/09/89	Insurance	**372.00**
07/26/89	Cook County Collector 2nd Installment 1988	1,313.54
08/06/89	Insurance	**372.00**
08/21/89	Attorney's fees and costs	1,829.40
09/03/89	Insurance	**372.00**
09/27/89	Attorney's fees and costs	687.50
10/08/89	Insurance	**372.00**
11/12/89	Insurance	**372.00**
11/20/89	Attorney's fees and costs	753.50
12/03/89	Insurance	**372.00**
01/03/90	Attorney's fees and costs	674.20
01/01/90	Insurance	**372.00**
02/04/90	Insurance	**372.00**
02/08/90	Attorney's fees and costs	437.50
02/26/90	Cook County 1st Installment 1989	1,257.51
03/04/90	Insurance	**372.00**
04/08/90	Insurance	**372.00**
05/13/90	Insurance	**372.00**
06/10/90	Insurance	**372.00**
07/15/90	Insurance	**372.00**
07/30/90	Insurance	**1,096.00**
08/17/90	Cook County 2nd Installment	1,308.06

08/19/90	Insurance	372.00
09/16/90	Insurance	372.00
	TOTAL DISBURSEMENTS	$-23,799.65
	MINUS ESCROW CREDITS	+1,380.89
		$-22,418.76 (neg. escrow bal.)
	Beginning negative escrow balance 9/90	$22,418.76
10/15/90	Attorney's fees and costs	2,406.10
10/15/90	Insurance	372.00
12/09/90	Insurance	422.00
12/27/90	Attorney's fees and costs	2,630.50
01/06/91	Insurance	422.00
01/29/91	Real Property Appraisal	500.00
02/14/91	Insurance	422.00
02/15/91	Cook County Collector (1st 1990)	1,282.79
03/07/91	Attorney's fees and costs	299.45
	Insurance	422.00
	Insurance	422.00
05/23/91	Attorney's fees and costs	1,204.00
06/18/91	Attorney's fees and costs	616.25
06/18/91	Attorney's fees and costs	478.50
08/21/91	Attorney's fees and costs	523.75
03/17/92	Attorney's fees and costs	910.25
06/29/92	Attorney's fees and costs	272.00
10/27/92	Attorney's fees and costs	2,770.25
01/15/93	Attorney's fees and costs	929.50
02/23/93	Attorney's fees and costs	442.00
	TOTAL NEGATIVE ESCROW:	$40,166.10
	ESCROW CREDITS	10,963.78
	TOTAL NEGATIVE ESCROW DUE:	$29,202.32

Yours truly,
s/"Steven R. Rappin"
SRR: cs
cc: Ms. Victoria Prochaska

WESTERN UNION FSI
RENO, NEVADA 89502-2375

WESTERN
UNION MAILGRAM

017840000722 11/01/93 CAGB

FRED RUCKER
1458 E 71ST PL
CHICAGO IL 60619-1570

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

3127526123 TDBN CHICAGO IL 57 11-01 0147P EST
9330509992302585-1

BILL ATWELL, DLR ASAP
PRESIDENT, CITIBANK
1 SOUTH DEARBORN
CHICAGO IL 60680

RE: CASE #88CH10806

MY PROPERTY IS SCHEDULED TO BE SOLD NOVEMBER 2, 1993, AT SHERIFF'S SALE. THERE IS A $30, 000 DISCREPANCY IN THE AMOUNT OWED CITIBANK. THE VP MICHAEL GREY, AKNOWLEDGES THE EXCESSIVE AMOUNT BUT WILL DO NOTHING. ITS'S URGENT THAT SOMEONE INTERVENE TO STOP THE SALE UNTIL THE CORRECT AMOUNT OWED CAN BE DETERMINED.

FRED RUCKER

14959
17 : 07 EST
MGMCOMP

APPENDIX C

28 U.S.C. 1257

(a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statue of the United States is drawn in question of its being repugnant to the Constitution treaties, or laws of the United States, or where any title right, privilege, or immunity is especially set up or claimed under the Constitution or the treaties or statutes of or any commission held or authority exercised under the United States.

(b) For purposes of this section, the term highest court of a state includes the District of Columbia Court of Appeals."

815 ILCS 505/2

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of such material fact, with intent that others rely upon the concealment, suppression, or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived, or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

Citations and Other Notes

"Cases in Equity That Become Moot on Appeal" 34 Harv. L. Rev. 416 417 1921 Also Works, Judicial Reform 86, 33 Harv. L. Rev. 326:

"Mootness on Appeal In the Supreme Court" 83 Harv. L. Rev. 1672 (1970)

"The Mootness Doctrine in The Supreme Court" 88 Harv. L. Rev. 373, 378 (1974)

"What Constitutes a Case or Controversy Within The Meaning of Article III of the Constitution" 41 Harv. L. Rev. 232, 239 (1927)

Internal Operating Procedures of Appellate Courts - American Bar Foundation - Robert A. Lefler

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(3)

Supreme Court, U.S.
FILED
JUN 10 1996
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No. 95-1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

FRED RUCKER,

Petitioner,

v.

CITICORP SAVINGS OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

CITICORP'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Supreme Court lacks jurisdiction to accept Rucker's Petition for Writ of Certiorari because no federal constitutional issues were raised below.

II. Whether dismissal of an appeal when a case is rendered moot and the court cannot grant effective relief violates due process.

LIST OF PARENTS AND SUBSIDIARIES OF CITIBANK, F.S.B. PURSUANT TO SUPREME COURT RULE 29.6

A. Citicorp Savings of Illinois, n/k/a Citibank, F.S.B. ("Citibank") is a subsidiary of Citicorp Banking Corporation, which itself is a subsidiary of Citicorp.

B. The following entities are first or second tier subsidiaries of Citibank:

Citibank Service Corporation
Citicorp Acceptance Corporation
Holiday Harbor Management Corp.
Citibank Acceptance Service Corp.
Citibank Mortgage Services, Inc.
Citicorp Financial Services Corp.
Citicorp Insurance Agency, Inc.
Camco Management, Inc.
Park Plaza Holdings, Inc.
Citibank Insurance Agency, Inc.
Citicorp Acceptance Service Corporation
First Savings Corporation
FSC Development Corporation
THL, Ltd.
Tapa Holdings, Inc.
West Cook-DuPage Development Company
West Suburban Investments, Inc.
Financial Reserve, Incorporated
First Paddle Creek, Inc.
Forest Creek Holdings, Ltd.
West Suburban Investments of CA
West Suburban Investments of CO
West Florida Investments, Inc.

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APPLICABLE STATUTES AND RULES

28 U.S.C. §1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

U.S. Supreme Court Rule 10.1

A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

a. When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

b. When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

c. When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Federal Rule of Appellate Procedure 34(a)

Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

Oral Argument will be allowed unless

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Illinois Supreme Court Rule 305(j)

Failure to Obtain Stay; Effect on Interests in Property. If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification

affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.

Illinois Supreme Court Rule 352(a)

Request; Waiver; Dispensing With Oral Argument. A party shall request oral argument by stating at the bottom of the cover page of his or her brief that oral argument is requested, or, if the party has allowed a petition for leave to appeal or answer to stand as his or her brief, by mailing to the clerk and to opposing parties, within the time in which the party could have filed a further brief, a notice requesting oral argument. If any party so requests, all other parties may argue without an additional request. No party may argue unless that party has filed a brief as required by the rules and paid any fee required by law. A party who has requested oral argument and who thereafter determines to waive oral argument shall promptly notify the clerk and all other parties. Any other party who has filed a brief without requesting oral argument may then request oral argument upon prompt notice to the clerk and all other parties.

After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power should be exercised sparingly.

735 ILCS 5/15-1509(a)

After (i) confirmation of the sale, and (ii) payment of the purchase price and any other amounts required to be paid by the purchaser at sale, the court (or, if the court shall so order, the person who conducted the sale or such person's successor or some persons specifically appointed

by the court for that purpose), shall upon the request of the holder of the certificate of sale (or the purchaser if no certificate of sale was issued), promptly execute a deed to the holder or purchaser sufficient to convey title. Such deed shall identify the court and the caption of the case in which judgment was entered authorizing issuance of the deed. Signature and the recital in the deed of the title or authority of the person signing the deed as grantor, of authority pursuant to the judgment and of the giving of the notices required by this Article is sufficient proof of the facts recited and of such authority to execute the deed, but such deed shall not be construed to contain any covenant on the part of the person executing it. If the deed issues to a grantee prior to the expiration of the period for appealing the confirmation of sale, and the grantee conveys title to another party within that period, that other party will not be deemed a bona fide purchaser unless and until such period expires without an appeal having been filed or, an appeal having been filed, such appeal is denied or withdrawn.

STATEMENT OF THE CASE

On October 10, 1990, a Judgment of Foreclosure and Sale was entered in favor of Citicorp Savings of Illinois, n/k/a Citibank, F.S.B. ("Citibank") and against Fred Rucker ("Rucker") (the "Judgment"). (Supplemental Record, C.3). The Judgment included an award for the insurance premiums of which Rucker now complains. The Judgment was not appealed.

On November 16, 1993, a sheriff's sale was conducted at which Citibank bid the entire Judgment debt and was the successful bidder (R. C84). On December 10, 1993, the sale was confirmed. (Supplemental Record, C13). Rucker appealed the confirmation of the sale to the Illinois Appellate Court. No stay was entered pending appeal.

On October 19, 1994, during the pendency of the appeal, Citibank sold the foreclosed property to James H. Wooten, Jr. and Gertrude D. Wooten (the "Wootens"). The Wootens are not parties to this action and are not nominees of Citibank. Citibank retains no interest in the foreclosed property.

On June 1, 1995, Citibank filed its Motion to Dismiss the appeal because Rucker's challenge to confirmation of the foreclosure sale was rendered moot by Citibank's conveyance to a *bona fide* purchaser for value. On June 15, 1995, the Appellate Court granted Citibank's Motion. On July 20, 1995, Rucker's Petition for Re-Hearing was denied. On December 6, 1995, the Illinois Supreme Court denied Rucker's Petition for Leave to Appeal.

During the pendency of the appeal, Rucker continued to prosecute his Counterclaim against Citibank for damages, which is based in part on the alleged overcharges

for insurance premiums that were awarded to Citibank in the Judgment. Although the Counterclaim was pending in the trial court when Rucker's appeal was dismissed, the Counterclaim has since been dismissed and is the subject of a separate appeal by Rucker to the Illinois Appellate Court, which is known as Case No. 95-3551.

No federal constitutional issues were raised below. Rather, the only constitutional argument advanced by Rucker was in his Petition for Leave to Appeal to the Illinois Supreme Court, which, for the first time, alleged a violation of the Illinois Constitution. *See* Appendix.[1]

SUMMARY OF THE ARGUMENT

Jurisdiction over a petition for writ of certiorari is dependent on whether the petitioner raised a federal question below. In this case, because Rucker failed to do so, this Court lacks jurisdiction.

In any event, no due process violation occurred. As a matter of Illinois law, Rucker's state court appeal was rendered moot, and oral argument became unnecessary, when the property that was the subject of the appeal was sold pending appeal. Rucker's Petition involves well-established principles of state law, rather than issues of constitutional import, and should be denied.

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[1] For the convenience of the Court, Rucker's Petition for Leave to Appeal is included in the Appendix without exhibits.

ARGUMENT

Rucker's Petition for Writ of Certiorari should be denied for several reasons. First, this Court lacks jurisdiction because no federal constitutional issues were raised below. Second, even if such issues had been raised, no due process violation has occurred.

I. The Court Lacks Jurisdiction.

This Court's jurisdiction is premised on 28 U.S.C. §1257(a). At a minimum, to invoke such jurisdiction on a petition for writ of certiorari, Rucker must have raised a federal constitutional question below. *Illinois v. Gates*, 103 S.Ct. 2317, 2321, 462 U.S. 213, 218-20 (1983). If not, this Court lacks jurisdiction to hear that claim, and Rucker's Petition should be denied. *Banker's Life & Casualty Co. v. Crenshaw*, 108 S.Ct. 1645, 1649-50, 486 U.S. 71, 76-78 (1988).

Although Rucker attempted to raise a state constitutional claim in the Illinois Supreme Court, that does not support this Court's jurisdiction. *Bowe v. Scott*, 34 S.Ct. 769, 771, 233 U.S. 656, 664-65 (1914). Furthermore, even if Rucker had asserted a federal constitutional claim in the Illinois Supreme Court, because he did not assert the claim in the Appellate Court, he waived his right to do so, *Hammond v. North American Asbestos Corp.*, 97 Ill. 2d 195, 454 N.E.2d 210, 218 (1983), and this Court lacks jurisdiction to hear the claim. *Bailey v. Anderson*, 66 S.Ct. 66, 68, 326 U.S. 203, 206-07 (1945).

II. Cancellation of Oral Argument Upon Dismissal of an Appeal Does Not Violate Due Process.

Rucker's Petition is based on his dissatisfaction with long-standing principles of Illinois law which, absent a stay, mandate dismissal of an appeal if effective relief cannot be granted. The application of those principles in this case does not raise any constitutional issues.

A. Illinois Supreme Court Rule 305(j) Mandated the Dismissal of Rucker's Appeal on the Grounds of Mootness.

As a matter of Illinois law, absent a stay pending appeal, an appeal which seeks to recover possession and ownership of property is moot and must be dismissed when a court cannot grant effective relief because the property has been conveyed to a third party. *Cosmopolitan National Bank of Chicago v. Nunez*, 265 Ill. App. 3d 1012, 639 N.E.2d 636 (1st Dist. 1994); *Avondale Savings & Loan Assoc. v. Amalgamated Trust & Savings Bank*, 78 Ill. App. 3d 234, 397 N.E.2d 121 (1st Dist. 1979) (principle applied to mortgage foreclosure sale). Although the result would be no different under federal law, Rucker's reference to the ability of Article III Courts to decide questions of mootness is inapplicable because this case involves the state, rather than federal, courts.

Under Illinois Supreme Court Rule 305(j), a reviewing court cannot grant effective relief when foreclosed property is sold to an unrelated third party pending appeal because a reversal or modification of the judgment does not affect the third party's rights. As a result, the sale to

the Wootens rendered Rucker's appeal moot.[2] Therefore, Illinois Supreme Court Rule 305(j), and the cases cited herein, mandated dismissal of Rucker's appeal.

B. Rucker's Due Process Arguments are Without Merit And Do Not Warrant Consideration By This Court.

Relying on general statements of constitutional law and platitudes concerning the purported benefits of oral argument, Rucker claims that his due process rights were violated when oral argument was cancelled due to dismissal of the appeal. However, it has long been established that there is no constitutional due process right to an appeal, let alone a right to present oral argument. *Griffin v. Illinois*, 76 S.Ct. 585, 590, 351 U.S. 12, 18 (1956). Rucker not only ignores such precedent, but fails to cite Illinois Supreme Court Rule 352(a) and glosses over Federal Rule of Appellate Procedure 34(a), both of which provide that oral argument is not necessary if the court can readily dispose of a case. Clearly, when a case has been concluded for mootness, no oral argument is necessary.

Supreme Court Rule 10.1 provides that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion." Rucker's Petition involves nothing more than a request for this Court to review state court rulings on matters of purely state law. Thus, it does not raise spe-

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[2] Contrary to Rucker's argument, 735 ILCS 5/15-1509(a) is inapplicable because it only applies to conveyances made within thirty (30) days of confirmation of the foreclosure sale.

cial or important considerations which would warrant this Court's exercise of jurisdiction.

CONCLUSION

Rucker's Petition for Writ of Certiorari should be denied because it raises absolutely no constitutional issues or violations.

Respectfully submitted,

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Dated: June 7, 1996

APPENDIX

No. _____

IN THE SUPREME COURT OF ILLINOIS

CITICORP SAVINGS OF ILLINOIS,

Plaintiff-Respondent,

vs.

FRED RUCKER, et al.,

Defendant-Petitioner.

Petition for Leave to Appeal from the Appellate Court of Illinois, First District, No. 94-0636. There Heard on Appeal from the Circuit Court of Cook County, Illinois, No. 88 CH 10806. Honorable Robert D. Ericsson, Judge Presiding.

PETITION FOR LEAVE TO APPEAL

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Fred Rucker, et al.

IN THE SUPREME COURT OF ILLINOIS

CITICORP SAVINGS OF ILLINOIS,

Plaintiff-Respondent,

vs.

FRED RUCKER, et al.,

Defendant-Petitioner.

Petition for Leave to Appeal from the Appellate Court of Illinois, First District, No. 94-0636. There Heard on Appeal from the Circuit Court of Cook County, Illinois, No. 88 CH 10806. Honorable Robert D. Ericsson, Judge Presiding.

PETITION FOR LEAVE TO APPEAL

The Defendant-Petitioner, Fred Rucker, et al. respectfully petitions this Court for leave to appeal from the judgment of the Appellate Court of Illinois, First District.

JUDGMENT BELOW

On June 15, 1995, the Appellate Court granted Plaintiff-Respondent Citicorp Savings of Illinois' motion to dismiss for mootness in the above captioned matter. On June 30, 1995, Defendant-Petitioner Fred Rucker, et al. filed a Petition for ReHearing on Plaintiff-Respondent's motion to dismiss. On July 20, 1995, the Appellate Court denied Defendant-Petitioner's Petition for Re-Hearing. On August 10, 1995, Defendant-Respondent filed an Affi-

davit of Intent to File a Petition for Leave to Appeal in the Appellate Court.

POINTS RELIED UPON FOR REVERSAL

1. On the motion of Plaintiff-Respondent Citicorp Savings of Illinois, the Appellate Court found that this appeal was moot in that the property in question had been allegedly conveyed to a third party. The Appellate Court did so despite the following facts:

a. Plaintiff-Respondent Citicorp Savings of Illinois charged an annual insurance premium on a monthly basis in the foreclosure action that is the basis for this Petition and did so to such an extant that of the outstanding $53,400.00 of the mortgage demanded by Plaintiff-Respondent Citicorp Savings of Illinois at the time of foreclosure, over one third consisted of said insurance overcharges fraudulently added by Citicorp to the mortgage amount in question.

b. The central issue before the Appellate Court was the trial court's affirmation of a Sheriff's sale of the property in question that included more than $18,000.00 in before mentioned illegal charges. The trial court, in approving such a sheriff's sale clearly abused its discretionary authority and such a sale should be set aside. Radar v. Bussey 313 Ill. 226, 145 N.E. 192 (1924).

c. In the final months preceding the Appellate Court's denial of Defendant-Petitioner's petition for Re-Hearing on July 20, 1995, on January 23, 1995, it was ordered that this appeal be heard without benefit of oral argument which was then overturned by an April 23, 1995 order granting oral argument.

This argument was re-scheduled twice before the entire appeal was dismissed for mootness on the basis that Plaintiff-Respondent Citicorp Savings of Illinois conveyed the property in question to a third party prior to the date that Fred Rucker's appeal was to be heard and decided upon by the Appellate Court. A copy of the orders of the Appellate Court is attached hereto a Defendant-Petitioner's Exhibit A.

The evidence that was before the Appellate Court clearly established that Plaintiff-Respondent Citicorp Savings of

page 2

Illinois foreclosed the property in question based on illegal and fraudulent charges. This approval of the Sheriff's sale resulted in a violation of the rights of Fred Rucker under Article One, Section Two of the Constitution of the State of Illinois where Mr. Rucker was deprived of his property without due process. The Appellate Court did not address that issue in dismissing the before mentioned appeal for mootness.

ARGUMENT

Now comes Defendant-Petitioner Fred Rucker ("Fred Rucker"), by his attorney Clarke P. Devereux and hereby requests that this Court allow his petition for leave to appeal so that the judgment of the Appellate Court may be reviewed and reversed and in support hereby states as follows:

1) On June 1, 1995, Citicorp filed a motion to dismiss the appeal of Fred Rucker on the basis that where Citicorp conveyed the property in question to a third party

prior to the date that Fred Rucker's appeal was to be heard and decided upon by the appellate court, this appeal was moot where Fred Rucker cannot be replaced in possession of the foreclosed property.

2) On June 15, 1995, the Appellate Court of Illinois of the First Judicial District granted Plaintiff-Respondent Citicorp's motion to dismiss for mootness and dismissed the appeal of Defendant-Petitioner Fred Rucker. Fred Rucker's Petition for Re-Hearing on Citicorp's motion to dismiss was denied on July 20, 1995.

3) Citicorp's motion was based on an affidavit of a "Louise Tuck", with no certified documents attached, which set forth the general conclusion that a division of Citicorp sold the

property in question to third party referred to as "Wooten". The before mentioned affidavit contained no particularized facts of evidentiary value, did not affirmatively show that affiant Tuck would be competent to testify to whatever conclusions contained therein and no affidavits of the supposed third party were attached.

4) Citicorp argued that where they allegedly conveyed the property in question during the pendency of this appeal to a third party, the appeal of Fred Rucker was moot where no stay has been obtained within the time for filing the appeal.

5) Citicorp cited the case of Cosmopolitan National Bank v. Nunez 265 Ill. App. 3rd 1012, 639 N.E.2d 636 (1st Dist. 1994) in support of its motion. It should be noted that in Cosmopolitan, the defendant admitted in a hearing before the trial court that she had not only never

made any mortgage payments, but that she had also never had obtained fire insurance of any kind which was a condition of her mortgage. 265 Ill. App. 3d at 1014. Also the plaintiff in Cosmopolitan supported their motion to dismiss with an affidavit with a direction to convey attached along with a closing statement and transfer declarations. 265 Ill. App. at 1012.

6) Fred Rucker at no time has ever admitted or sought to admit that he had neglected to ever meet his mortgage payments on the property in question and obtain insurance for the property. It should also be noted that prior to the foreclosure involved in

page 4

this appeal, Fred Rucker had insurance for his property and it was Citicorp's actions in charging an annual insurance premium on a monthly basis that was the cause of this foreclosure action in the first place.

7) Under Cosmopolitan, the Tuck affidavit is completely lacking in substance to support Citicorp's argument that they conveyed the property in question to a third party. 265 Ill App. 3d at 1015. The affidavit in conclusory, not based on personal knowledge, does not set forth facts admissible in evidence and does not affirmatively show that Louise Tuck would be competent to testify to any of the conclusions contained therein at trial. Under Supreme Court Rules 191, 276 and 361 governing affidavits, the Tuck affidavit is defective and should not have been considered by the Appellate Court. Staren & Co. v. Shapiro 32 Ill. App 3d 396, 400: 336 N.E. 2d 228 (1st District 1972); Inland Real Estate Corporation v. Seymour 56 Ill. App. 3d 581, 583; 371 N.E.2d 1187 (1st District 1977); Burkett v. Finger Lake Development Cor-

poration 32 Ill. App. 3d 396, 400; 336 N.E. 2d 628 (Fifth Dist. 1975).

8) Unless the record clearly showed that the third party purchasers of property were not parties to the litigation or nominees of party, Illinois Supreme Court Rule 305 (j) regarding stays does not apply. Pinnacle Corporation v. Lake in the Hills 258 Ill. App.3d 205, 208; 630 N.E. 2d 502 (2d Dist. 1994). Also, where Citicorp argued that, under Illinois law, this appeal was

moot because the property in question had been conveyed to a third party during the pendency of an appeal, 735 ILCS 5/15-1509 (a) states the following:

"If the deed issues to a grantee prior to the expiration of the period for appealing confirmation of sale, and the grantee conveys title to another party within that period, that other party shall not be deemed a bona fide purchaser unless and until such period expires without an appeal having been filed or such appeal is denied or withdrawn." 735 ILCS 5/15-1509 (a).

In regard to Citicorp's motion to dismiss, if their argument was followed to its inevitable conclusion, the alleged third party purchasers are not Bona Fide purchasers of the foreclosed property in question and Fred Rucker can regain title to the property in question.

9) The issues on appeal were not whether the relief sought could be granted if the property in question had been sold or if there was a pending counter-claim in the Chancery Division of the Circuit Court. The issues on appeal were the following:

-Did the trial judge abuse his discretionary authority by approving a Sheriff's sale with elements of fraud involved on the part of Citicorp?

-Did Plaintiff-appellee Citicorp misrepresent themselves when establishing a grossly inflated sales price on the property in question and violate the Illinois Consumer Fraud Act (Illinois Revised Statutes Ch. 121 1/2 sec. 261 et seq.)

9) Of the $53,400.00 amount that Citicorp alleged that

Rucker owed on the mortgage of the property in question, over one third of the amount consisted of insurance overcharges and other fees fraudulently added by Citicorp to the mortgage amount in question. Plaintiff-appellee Citicorp virtually admitted the above-mentioned facts in correspondence to Defendant-appellee Fred Rucker attached hereto as Defendant-Petitioner's Exhibits B, C and D.

10) The trial judge, in approving the sheriff's sale for a figure containing $18,000.00 in false charges from Plaintiff-appellee Citicorp clearly abused his discretionary authority. Radar v. Bussey 313 Ill. 226, 145 N.E. 192 (1924).

11) In adding nearly $18,000.00 to the mortgage of the property in question, Plaintiff-appellee Citicorp misrepresented itself in violation of the Illinois Consumer Fraud Act. In interpreting the Illinois Consumer Fraud Act, the courts have declined to use the restrictive elements of common law fraud, but have been willing to give effect to legislative goals behind enactment of this genre of consumer protection legislation. Eshagi v. Han-

ley Dawson Cadillac Co. Inc., 214 Ill. App.3d 995, 1001; 574 N.E.2d 760 (1st Dist. 1991). In determining whether a practice is unfair under the Consumer Fraud Act, courts are guided by the following factors: Whether a practice, even if not unlawful, offends public policy as established by statutes, the common law or otherwise, or whether if is at least within the penumbra of some established concept of unfairness; and whether it is immoral, unethical, oppressive or unscrupulous; and whether

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it results in substantial injury to consumers. Ekl v. Knecht 223 Ill. App. 3d 234, 585 N.E.2d 156, 163 (2nd Dist. 1991). In adding $18,000.00 to the mortgage price in false charges, Plaintiff-appellee Citicorp clearly violated the Illinois Consumer Fraud Act.

CONCLUSION

The approval of the Sheriff's sale of the property in question amounts to a violation of the rights of Mr. Rucker under Article One, Section Two of the Constitution of the State of Illinois. Not only was Fred Rucker deprived of his property, but he was also denied an opportunity to actually repurchase the property due to the illegal and fraudulently inflated price.

In order for justice to be served, the facts must be considered. Neither the trial court nor the Appellate Court ever considered the salient fact that the purchase price of this property was illegally inflated by over one-third by the Plaintiff-Respondent.

For the foregoing reasons, Defendant-Petitioner, Fred Rucker, et al. respectfully requests that this Court allow

his petition for leave to appeal so that the judgment of the appellate court may be reviewed and reversed.

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Respectfully, submitted,

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Attorney for Defendant-Petitioner,
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August 24, 1995

(2)

Supreme Court, U.S.
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JUL 16 1996
CLERK

No. 95-1963

In The

Supreme Court of the United States

October Term, 1995

FRED RUCKER,

Petitioner,

v.

CITICORP SAVINGS OF ILLINOIS

Respondents.

On Petition for a Writ of Certiorari
To The Illinois Court of Appeals for the First District

PETITIONER'S REPLY BRIEF

July 5, 1996

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Fair Housing Act 1968 3,4

No. 95-1963

In The

Supreme Court of The United States

October Term, 1995

FRED RUCKER,

Petitioner,

v

CITICORP SAVINGS OF ILLINOIS,

Respondents.

On Petition For a Writ of Certiorari to The Illinois Court of Appeals for The First District

PETITIONER'S REPLY BRIEF

Respondent's arguments highlight why this Court should grant the Petition.

By promoting the technical issue "lack of jurisdiction", Respondent is conceding the central issue in this case.

The primary reason the case is before this Court is because Respondent violated State and Federal laws that led to the loss of Petitioners property.

Given the fact that Respondent admitted to the negligent actions that caused the property loss, the dispute should have been resolved in the Trial Court.

Respondent's statement:

> "Our review has determined that you received inconsistent information from us and our affiliate service regarding the amount of forced placed insurance premiums that would be charged to your mortgage loan account and the coverage provided thereby.
> As a result of this poor customer service on our behalf, we will agree to reduce the amount of our claim in your Chapter 13 Bankruptcy by $10,000."

The state appeals court's dismissal of this case in light of the evidence hinges on malfeasance.

I. In 1992, Federal Examiners Disclosed A Mortgage Escrow Scam Promoted By Respondents. The Discovery Forced Respondents To Return Twenty-Eight Million Dollars To Their Mortgage Holders.

The litigation in this case began in 1988 over what was considered an error in calculating this Petitioner's mortgage escrow. A four thousand dollar overcharge quickly became thirty thousand dollars, leading to foreclosure and ultimately a sheriff's sale of the property.

After many attempts at mitigation, Respondent reluctantly agreed to reduce their claim by ten thousand dollars (only one third of the amount

claimed). This reduction was conditioned on keeping the matter confidential. Years later, it became evident why the confidentiality had been requested. Nevertheless, the amount was never adjusted and Respondent refused to return the property even with a firm commitment to pay the debt in full. A review of the documents in Appendix A will better explain how the escrow scam worked.

The number of citizens affected by this scam is of alarming proportions and is a matter of public interest.

II. Respondent Attempts To Divert The Courts Attention By Raising The Issue Of "Lack Of Jurisdiction" Because No Constitutional Question Was Raised In The Initial Complaint.

Violation of the Fair Housing Act is a violation of Federal law.

What was believed (in 1988) to be corporate negligence, was in fact a contrived infringement of Petitioner's individual property rights, protected under the Fourteenth Amendment.

When Congress established the Fair Housing laws in the 1960's (under the Civil Rights Act of 1964 and the Fair Housing Act of 1968), a major contingent of the Act was to regulate the insurance industry, i.e. how rates were established. Congress recognized that the insurance industry, through its practice of manipulating rates (price fixing) was having a devastating impact on cities and communities across the country. Their impact was so controlling that it prompted Mr. Justice William Douglas to state:

"Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy."

The practice of manipulating insurance rates is termed "Redlining". Redlining occurs typically in minority communities where insurance is either denied or the rates are set too high for property owners to maintain their property.

In a landmark decision, a federal judge in Dayton, Ohio ruled on June 23, 1979 that the Fair Housing Act applies to insurance redlining. (See Appendix A)

Judge Carl B. Rubin's decision in the Auston Dunn v. Midwestern Indemnities case set a national precedent. It was the first time the Fair Housing Act had been specifically applied to insurance redlining.

In his decision, judge Rubin said:

"The availability of appropriate insurance is a necessary precondition to the availability of financing, and financing assistance is a pre-condition to securing the availability of adequate housing. Since insurance is a precondition to adequate housing, a discriminatory denial of insurance would present a person, economically able to do so, from buying a house. Consequently -- insurance redlining is encompassed by both the broad language of 360 (a) and the legislative design of the Act which seeks to eliminate discrimination within the housing field."[1]

---

[1] "It is a violation of civil rights to refuse to sell or rent after making a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin." - Fair Housing Act of 1968

In this case, the excessive insurance rates were initially dismissed as "corporate negligence". However, because the excessive rates were allowed to stand and the sale of the property allowed to proceed, (Radar v Bussey) Respondent is guilty of several egregious violations, one of which is redlining.[2]

The subject matter alone in this case established this Court's jurisdiction. Respondent need only to read petitioner's Brief on Appeal (pg. 5 par. 4) to learn that a constitutional question was in fact raised in the lower court.

III. The Court Should Review This Case To Clarify Whether Controversy Existed When The State Dismissed For "Mootness".

In every case where restitution or compensatory damages may be awarded, the Court has ruled the case was not "moot". Respondent's contention that since the property was sold the case was moot, is contrary to this Court's majority philosophy on the matter. The mootness doctrine requires that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." See Powell v. McCormack 395 U.S. 486, Liner v. Jafco, Inc. 375 U.S. 301 (1964), Roe v. Wade 1973, DeFunis v. Odegaard (1974).

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[2] A federal audit conducted in 1992 on Respondent's mortgages portfolio disclosed that more than twenty-five percent of the mortgage escrow balances were calculated in error. Twenty-five percent represents tens of thousands of individuals being overcharged amounts totaling several million dollars. In Petitioner's case, a twenty thousand dollar balance became more than sixty-thousand dollars owed as a result of Respondent's calculations.

Respondent committed the contemptuous act of Transferring Title while the ownership was under review so they could make the argument that the case was "moot".

The U.S. Supreme Court will not treat a case from the state court as "moot" in the situation where state judgment causes "direct, specific, and concrete injury" to the parties who petition for review, assuming that otherwise the requisites of a case or controversy are met. Asarco, Inc. v. Kadish, 490 U.S. 605, 109 S. CT. 2037. This Petitioner was made homeless by State action and remains so.

Article III Courts may not decide moot questions, only actual cases or controversies.

> "A justifiable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Insurance Co. v. Haworth, 300 U.S., 227, 240-241.

IV. The Court Should Grant The Petition To Clarify The Standard Of Review As Set Out By The U.S. Court Of Appeals, (Third Circuit) For Granting Oral Argument, Which The State Court Grossly Misapplied.

The U.S. Court of Appeals for the Third Circuit, which has studied the problem of eliminating oral argument and has listed as a criteria for granting oral argument the following:

"Where a decision, legislation, or event, subsequent to the filing of the last brief may significantly bear on the case."

The last brief was filed in July of 1994. Respondent transferred title October 24, 1994. The transfer of title after the last brief was filed is the most significant event of the proceedings and should have warranted oral argument.

The state court abused its authority in dismissing the case, given the facts and evidence involved.

CONCLUSION

All of the evidence when viewed so overwhelmingly favors Petitioner that no contrary verdict could ever stand.

The U.S. Constitution and the Constitution of the State of Illinois protects its citizens from the deprivation of property. Petitioner has demonstrated in the lower courts that Respondent's actions were illegal under Federal and State law. Federal Examiners have criticized Respondent for their high tech thievery through escrow accounts, and Respondents themselves have admitted to the negligence that caused the property loss.

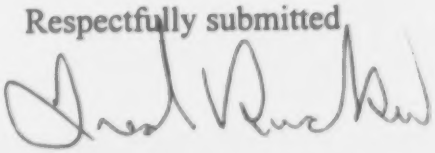
When Congress established legislation i.e., The Fair Housing Act, the Commerce and Fair Trade Act and the Consumer Fraud Act, the intent was to discourage fraud and to promote fair play in the marketplace.

Respondents have violated each of these Acts and caused egregious injury to thousands (including this Petitioner) and have escaped review.

The State court has also caused injury through the abuse of its' authority. The U.S. Court of Appeals for the Third Circuit has established procedures that have been ignored by the State Court in this case.

For the foregoing reasons, and the benefit of countless individuals whose rights have been violated by those abusive actions, the Court should review this case.

Respectfully submitted,



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The Chicago Tribune

Examiners criticize Citicorp mortgage unit

New York Times News Service

NEW YORK — Federal bank examiners have criticized Citicorp's home-mortgage subsidiary, one of the largest in the country, for sloppy practices that exposed the banking company to excessive risk and overcharged many customers.

The examiners' document, provided anonymously to the New York Times on Wednesday, chastised management for a variety of mistakes and said top executives "have neglected their responsibilities to correct identified problems."

It said some problems identified as long ago as 1988 have not been corrected.

John M. Morris, a spokesman for Citicorp, declined to comment and noted that the same laws that make it a criminal violation to publish parts of a bank examination report "make it illegal or us to discuss it." The Comptroller of the Currency's office also declined to comment.

Citicorp has corrected some of the problems identified in the report, which is dated Aug. 18. Earlier that month, Citicorp admitted that problems identified by the examiners were forcing it to revise its second-quarter earnings downward by $28 million, to $143 million.

The document says the company was doing such a poor job of screening out unqualified home buyers that a high percentage of the mortgages it originates cannot be sold to other investors unless Citicorp promises to buy them back in the event of a default.

The poor practices in the lending process singled out in the report also affect consumers who rely on St. Louis-based Citicorp Mortgage Inc. to keep track of monthly payments on their mortgage and escrow accounts. Escrow accounts were incorrectly calculated in 25 percent of all the loans issued by Citicorp Mortgage in January and February, the bank examiners found.

Respondent admits negligence - News article suggests FRAUD.

Washington Post
Sunday, June 24, 1979

Fair Housing Act Used in Insurance Suit

CINCINNATI–A U.S. District Court Judge has ruled that the Fair Housing Act can be used to sue insurance companies for allegedly denying homeowners insurance on the basis of the racial composition of a neighborhood.

Civil rights attorneys in Washington said the decision by Judge Carl B. Rubin set a major precedent.

Rubin's ruling came last week in a $4.42 million suit filed last May by a Dayton, Ohio, couple against five insurance companies in Ohio and Indiana and a Dayton insurance agent.

The suit charges that Austin and Mary Dunn were victims of racial discrimination because their $30,000 homeowners'insurance policy, which they held with the same independent company for 22 years, was abruptly cancelled in December 1977. The couple claims it was cancelled because they are black and their home is located in a predominantly black neighborhood.

In his ruling, Rubin denied a motion by Midwestern Indemnity Co., which sought to dismiss the Dunns' contention that the Fair Housing Act, a section fo the 1968 Civil Rights Act, applies to insurance companies.

Rubin ruled that the insurance industry is covered by the act.

Rubin did not rule on whether there was any discrimination. Rather, he ruled the case could go to trial to decide that question.

In New Orleans, a federal appeals court has upheld the right of a community association to sue a real estate firm for allegedly "blockbusting" its racially mixed New Orleans neighborhood.

CITICORP SAVINGS OF ILLINOI100
P.O. BOX 44
CHICAGO, IL 60680

ACCOUNT NUMBER
0000108027
MORTGAGE ACCOUNT PAID TO
12/15/87

ANNUAL STATEMENT OF MORTGAGE ACCOUNT FOR 1987

	PRINCIPAL	ESCROW IMPOUND	UNAPPLIED
BEGINNING BALANCE			
ENDING BALANCE	20931.96	620.3	0.00

700-00000108027

INFORMATION FOR TAX PURPOSES REQUIRED BY IRS

RECIPIENT'S/LENDER'S NAME AND ADDRESS
CITICORP SAVINGS OF ILLINOIS
P.O. BOX 44
CHICAGO, IL 60680

RECIPIENT'S TAX I.D. NUMBER: 13-3286988
PAYER'S TAX I.D. NUMBER: 311-44-9394

PAYER'S/BORROWER'S NAME AND ADDRESS
0000108027
FRED RUCKER
P.O. BOX 7719

SUBSTITUTE FORM 1098 OMB NO 1545 0901

SEE REVERSE SIDE FOR TAXPAYER INSTRUCTIONS

INTEREST PAID	
[illegible]	1755.81

INTEREST SHORTAGE UNPAID BALANCE

DISBURSEMENTS FROM ESCROW ACCOUNT	
REAL ESTATE TAXES	1615.33
HAZARD INSURANCE	
MORTGAGE INSURANCE	
MISC	
REFUNDS TO CUST	

CONSTRUCTION LOAN ONLY

BUY DOWN BALANCE ACCOUNT
BEGINNING BALANCE
DISBURSEMENTS
INTEREST ADDED IF APPLICABLE
ENDING BALANCE

100000003964

11a

[redacted]	[redacted]	[redacted]	[redacted]
0006473059	12/19/91	01/15/92	$13,747.104

MP 429.00

FRED RUCKER
1458 EAST 71ST STREET
CHICAGO IL 60619-1563

CITICORP MORTGAGE INC.

000064730591 0000042900 0000043975 0001374704

DETACH HERE

[redacted]

Mortgage Account No.	0006473059	Type of Mortgage	
Property Address	1456-58 E 71st PL Chicago, IL	Current Balance	$25,211.50
		Interest Rate	9.000 %

[redacted]

	PAYMENT RECEIVED	CURRENT PAYMENT DUE
Date	12/13/91	01/15/92
Principal		$75.09
Interest	$645.00	$139.91
Escrow	$642.00	$214.00
Optional Insurance		
Additional Payment		
Mortgage Payment	$1,287.00	$429.00
Pay Due Amount		$12,867.27
Late Charges		$450.77
UNAPPLIED FUNDS	$824.50-	
TOTAL AMOUNT	$1,287.00	$13,747.04

Total Amount to be received
Total Amount Due After

[redacted]

$2,580.00
$1,182.79

[redacted]

11/20/91	BEGINNING ESCROW BALANCE	$33,026.29-
11/20/91	ESCROW PAYMENT RECEIVED	$214.00
12/13/91	ESCROW PAYMENT RECEIVED	$214.00
12/13/91	ESCROW PAYMENT RECEIVED	$214.00
12/19/91	ENDING ESCROW BALANCE	$32,384.29-

A TAX AND INTEREST STATEMENT FOR INCOME TAX PREPARATION WILL BE SENTBY JANUARY 31, 1992.

[redacted]

2597

CITICORP

RALPH W. MILLER, JR.
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(708) 953-8534
(800) 834-3250
(Northwestern Illinois)

February 4, 1994

Hauselman & Rappin
Attorneys at Law
39 South LaSalle Street
Chicago, Illinois 60602

Attention: Steven R. Rappin, Esquire

Re: **88CH 10806 - Citicorp v. Rucker, et al. Offer to Purchase Property in Question**

Gentlemen:

In accordance with our telephone conversation today, and my subsequent discussion with Mr. Fred Rucker, I understand that he has obtained a firm commitment of financing and has made a formal, written offer to purchase the subject property from your client for a cash price of $55,000.00. I also understand, however, that your client will not accept such an offer (or apparently any other offer from Mr. Rucker) unless he will agree to dismiss and release any potential and existing litigation, claims, or other proceedings against your client.

Mr. Rucker has directed me to reject any acceptance that is so conditioned on the totally unrelated requirement by your client for release and dismissal of any claims of rights he believes he may have against "Citicorp", et al.

I earnestly request that the ask your client to reconsider its position and that Mr. Rucker's patently fair offer (for property purchased by your client for some $53,400) be accepted. I will be happy to work with you in this regard. It would seem that such an acceptance could reduce or eliminate at least one aspect of Mr. Rucker's claims.

We look forward to hearing form you. Thank you for your cooperation.

Sincerely,

s "(_____)"
Ralph W. Miller, Jr.

RWM:r
Copies to: Mr. Fred Rucker
Joseph R. Mitchell, Esquire

Civil provisions

42 U.S.C. § 1981: "*Equal rights under the law.* All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and executions of every kind, and to no other."

42 U.S.C. § 1982: "*Property rights of citizens.* All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

42 U.S.C § 1983: "*Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the district of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

42 U.S.C. § 1985(3): "*Conspiracy to interfere with civil right.* (3) [If] two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; [the] party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."